



**General Assembly**

Distr.  
LIMITED

A/HRC/WG.6/2/L.7  
14 May 2008

Original: ENGLISH

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HUMAN RIGHTS COUNCIL  
Working Group on the Universal Periodic Review  
Second session  
Geneva, 5-19 May 2008

**DRAFT REPORT OF THE WORKING GROUP ON THE  
UNIVERSAL PERIODIC REVIEW**

**Switzerland \***

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\* The final document will be issued under document symbol A/HRC/8/41.

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## **Introduction**

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its second session from 5 to 19 May 2008. The review of Switzerland was held at the 7th meeting on 8 May 2008. The delegation of Switzerland was headed by H.E. Ms. Micheline Calmy-Rey, Federal Councilor and Head of the Swiss Federal Department of Foreign Affairs. For the composition of the delegation, composed of 22 members, see annex below. At its 11th meeting held on 13 May 2008, the Working Group adopted the present report on Switzerland.
2. On 28 February 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Switzerland: Uruguay, Pakistan and South Africa.
3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Switzerland:
  - (a) A national report submitted in accordance with paragraph 15 (a) (A/HRC/WG.6/2/CHE/1);
  - (b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/2/CHE/2);
  - (c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/2/CHE/3).
4. A list of questions prepared in advance by Denmark, Sweden and the United Kingdom of Great Britain and Northern Ireland was transmitted to Switzerland through the troika. These questions are available on the extranet of the Universal Periodic Review.

## **I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS**

### **A. Presentation by the State under review**

5. At the 7th meeting, on 8 May 2008, H.E. Ms. Micheline Calmy-Rey, Federal Councilor and Head of the Swiss Federal Department of Foreign Affairs, representative of Switzerland, introduced the national report. The representative affirmed that her country was pleased to be one of the first countries to be reviewed and that it had volunteered for this. Switzerland was convinced that the Universal Periodic Review had the potential to improve the human rights situations around the world and affirmed that the Universal Periodic Review was an important innovation of the Human Rights Council, added to a large number of mechanisms dealing with the implementation of human rights, and that it will not be able to have full effect unless it takes place on the basis of dialogue and a spirit of openness. The effectiveness of the review will depend on the visible and concrete improvement of human rights situation in countries. The Declaration and Plan of Action of Vienna stated that "All human rights are universal, indivisible, interdependent and interlinked". For that reason, Switzerland in elaborating its report has followed the structure of the Universal Declaration on Human Rights. This approach allows to cover all rights. However, the fact that human rights are indivisible and interlinked does not mean that they are all the same kind.
6. More than a simple constitutional structure, Switzerland affirmed that its federal system is a fundamental political culture. Federalism, democratic consultations, protection of minorities, and the quest for compromise are indispensable instruments in the construction of Switzerland. According to the Federal Constitution, it is only those competencies attributed to the Confederation

by the Swiss cantons and people which fall under the aegis of the Confederation. Cantons have very broad competencies in various areas such as education, police, health etc. The federal structure sometimes involves entanglements of responsibilities. The principle of subsidiarity is fundamental when it comes to ensuring the rights of Swiss citizens. The culture of dialogue with all the parties involved was also maintained in drafting the national report for the Universal Periodic Review.

7. The main observations made by NGOs have been included in the report. For example, with regard to the creation of a national human rights institution, a working group consisting of representatives of the cantons, the Confederation and of parliamentarians held meetings over the last few months and drafted a report for the Federal Government on the feasibility of setting up a national human rights institution. As regards the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights, Switzerland considered that the provisions of the Covenant served as guidelines for the State's legislation and policies. These rights are programmatic in nature and do not necessarily lead to right before the court. Any international treaty ratified by Switzerland immediately became part of national legislation. Switzerland was exploring the opportunity to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities. On the fight against discrimination, a series of laws for specific vulnerable groups such as women, children, persons with disabilities, and foreigners exist. Switzerland noted that all citizens participated in the decision-making process and there was a great transparency in political debates. Efforts were continuously made to ensure that various sectors of society were able to express their views. Finally, Switzerland stated that the Universal Periodic Review represented a real step forward and made possible a venue to allow to listen to one another and make concrete recommendations, and to understand the specificities and constraints faced by countries regarding the implementation of human rights.

8. In response to written questions submitted in advance, Switzerland noted with regard to the application of the new law on asylum the assertions that some provisions were tough were not valid, since the legal provisions that came into force in January 2007 were in line with the Federal Constitution and with international public law. As of 1 January 2007 it was possible for an asylum-seeker to be provided with a residence permit if conditions were met. With regard to the treatment of foreigners, the law includes for the first time provisions on the integration of foreigners. The aim is to ensure equal opportunities for foreigners and to allow aliens to participate in the political, economic and social life. It was noted that 21 per cent of the Swiss population were foreigners and that efforts were still needed in particular areas such as training, the labour market, public health, etc. As to equality of sexes, women are still underrepresented in responsible jobs as it is sometimes still difficult to combine professional and private lives. Various awareness-raising campaigns had been organized to promote this equality. Financial assistance was made available to ensure that children had access to nurseries and efforts were being made throughout the country to ensure that all children could attend school. A number of projects have also been put in place to promote wage equality between men and women, including by promoting companies that ensure equal salaries. Within Parliament, the two chambers were almost unanimously in favor of the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women, which should take place in July 2008 unless a referendum is called for. Compatibility of maternity leave and relevant benefits are in place, and more favourable provisions can be reached through a collective labour agreement or measures at cantonal level. With regard to violence against children and suicide, the scope of the phenomenon of sexual violence against children needs further comprehensible studies throughout the country. There are criminal statistics which do not show the full scope of the problem, as there is still underreporting on a number of cases. On the issue of adolescent suicides, a report approved by the Federal Council in 2005 revealed that the yearly 1,400 cases of suicide were above the world average. It is essential to strengthen preventive measures, in

particular at cantonal level, with a view to reducing the number of suicides. With regard to the ill-treatment of children, it was noted that corporal punishment is prohibited at schools. To the question asked on whether corporal punishment was allowed at home, Switzerland stated that the Federal Constitution specifically protects children against degrading punishment and treatment, and any physical punishment of a child is punishable and prosecutable.

### **B. Interactive dialogue and responses by the State under review**

9. During the ensuing interactive dialogue, 42 delegations made statements and praised Switzerland for its high-level representation and the quality of its presentation and national report.

10. Algeria welcomed Switzerland's dedication to multilateralism and the promotion of humanitarian law and human rights, and the moral leadership it exercises, being the host of multilateral institutions. It asked about measures to tackle the growing phenomenon of xenophobia, and in particular Islamophobia. Algeria endorsed the recommendation of the Committee on the Elimination of Racial Discrimination (CERD) calling on Switzerland to pursue its efforts in preventing and combating xenophobia. Algeria also endorsed the recommendations made by the Committee on the Rights of the Child, in particular related to children asylum-seekers, refugees and migrants. Algeria recommended the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). It also recommended the establishment of a national human rights institution.

11. Brazil welcomed concrete efforts undertaken by Switzerland to foster human rights and democratic values. It stated that Switzerland replied positively to numerous human rights challenges, inter alia, on the rights of the child, disabilities, sexual orientation and right to education, but it would need to further focus on other challenges. Brazil enquired about steps taken to promote the rights of the child, on the main aspects of the policies on the treatment of migrants, on the promotion of the fight against racism and other forms of discrimination, and on the challenges a federative State faces in ensuring a coherent approach to the promotion of human rights. Brazil recommended the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women and accession to the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), and to foster internal analysis on the law on asylum in light of relevant international conventions.

12. Belgium underlined that the civil society revealed concern about migration policies: the revision of the Asylum Law of 2006 and popular initiatives, and referred to the referendum which will be held on 1 June 2008 on the question of naturalizations. In 2003, the Federal Tribunal ruled that voting on naturalization was illegal; naturalization is an administrative act rather than a political one, and voting also deprives candidates of the right of appeal. Belgium noted that currently, there is no legal body which can take a position on the legality of a popular initiative, and that only the Parliament, which is a political body, can handle decisions on the legality of popular initiatives. Belgium wanted to know how Switzerland will deal with popular initiatives which may be problematic or contrary to human rights law. Belgium recommended to the Federal Government to adopt legislative or other measures so that human rights are taken into account upstream by the judiciary, in particular during the elaboration of popular initiatives to ensure their compliance with international obligations.

13. India noted that in 2002, Committee on the Rights of the Child recommended that Switzerland establish a federal independent human rights institution in accordance with the Paris Principles, and that the Human Rights Committee made a similar recommendation in 2001. Therefore, India wished to recommend the speedy establishment of a Paris Principles compliant national human rights institution. Taking into account the recommendations made by the Human

Rights Committee and the Committee on the Elimination of Discrimination against Women (CEDAW) on the position of women within the Swiss society and the lack of a definition in domestic law of “discrimination against women”, India recommended that Switzerland consider the establishment of a national commission for women to facilitate a holistic approach at the national level to issues related to women. India also enquired about the lack of a formal prohibition of slavery in the Federal Constitution, as reported in paragraph 46 of the national report.

14. Malaysia noted with encouragement the existence of various bodies providing advisory and administrative services in the field of human rights and was interested to learn more about how these bodies galvanise their synergy. Switzerland was thanked for information provided on the issue of the establishment of a national human rights institution. Malaysia was impressed with Switzerland’s efforts to address the scourge of racism and encouraged it to continue to take effective measures to address concerns relating to the human rights of foreign communities and national minorities for their better integration into the Swiss society.

15. Egypt stated that, in recent years, an increase in racist and xenophobic acts was detected in Switzerland, and recommended that existing mechanisms to fight racism be reinforced and that specific legislation on racial discrimination be developed. Likewise, Egypt noted that acts of incitement to racial and religious hatred, against particular racial and religious minorities are presently quite common, and recommended that a specific law against incitement to racial and religious hatred be adopted, in conformity with article 20, paragraph 2, of ICCPR. Furthermore, Egypt observed that because the Swiss Constitution recognized civil and political rights as rights but referred to economic, social and cultural rights as social goals, the International Covenant on Economic, Social and Cultural Rights which Switzerland ratified more than 15 years ago cannot be implemented properly. Egypt recommended that Switzerland rectify this situation, and the justiciability of economic, social, and cultural rights be established in domestic law. It also recommended that Switzerland ratify the ICRMW.

16. Canada endorsed the recommendation made by Algeria and India on the need for the establishment of a national human rights institution. Regarding the issue of democratic naturalization, Canada recommended to maintain judiciary recourse on the granting of citizenship process. It noted that most of the juvenile offenders are treated as adults and recommended that offenders under 18 be treated in a different manner. Concerning the situation of foreign women subject to violence and whose resident permits depend on the fact that they are living with their spouses, Canada recommended that the revocation of the resident permit of married women who are victims of domestic violence be subject to a review after a full evaluation of impact on those women and their children. Regarding incidents of brutality against foreigners during their arrest or deportation, Canada recommended the recruitment of minorities in the police and the establishment of a body tasked to carry inquiries into cases of police brutality. Canada also recommended that Switzerland continue its efforts to promote the use of non-gender specific language.

17. France joined previous statements that the lack of a national human rights institution undermines a comprehensive view of the human rights situation in Switzerland, and reiterated its interest on developments on this matter. Furthermore, France asked for information on the process of adoption of a federal law against discriminatory practices, especially discrimination against disabled persons, and against gay, lesbian, bisexual and transsexual persons. In this framework, France also enquired about the nature of sanctions and punishment for those guilty for violating the human rights of persons with a different sexual orientation. It also took note of the related study on the legal impact of the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, and recommended that it be ratified.

18. Mexico recalled that there is no definition of torture in line with all elements of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment CAT and asked if any measures were planned in that respect. It also asked whether any study had been made on the compatibility of Swiss asylum law with its obligations under the 1951 Convention on refugees and its 1967 Protocol, and suggested that Switzerland review its legislation on asylum and refugees in the light of these instruments, if needed. Mexico recommended the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to CAT. It also recommended the creation or designation of a national mechanism for the prevention of torture and that Switzerland accede to the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities.

19. Cuba hoped that Switzerland will withdraw its reservation to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and wished to make a recommendation in this regard. Recalling Switzerland's engagement with humanitarian action, Cuba asked about the prospects of attaining 0.7 per cent of GDP devoted to humanitarian aid, instead of the level of 0.4 per cent in the last years. Cuba recommended that Switzerland consider increasing its support and assistance to developing countries as a means of implementing the right to development and as a contribution to the achievement of the Millennium Development Goals (MDGs). Finally, Cuba enquired about the measures the Government intends to take to address the high suicide rate among juveniles.

20. In response to the interventions, Switzerland noted that since 1996 an office within the federal administration coordinates work on the protection of children and informs of assistance. Research is undertaken, subsidies provided, and a free of charge hotline is available 24 hours per day to help young people in all cantons. Relevant departments at canton level dealing with health, youth, sport, education undertake measures, and cantons undertake initiatives to ensure better training of professionals to address violence against children. The human rights of migrants are ensured in Switzerland by the Federal Constitution, international human rights provisions are directly applicable and migrants can claim protection under these provisions before the courts. The Federal Council and the Parliament always check and monitor whether a popular initiative is in line with Switzerland's international obligations. If such an initiative contravenes with peremptory norms of international law, it is declared totally or partially null and void by the Federal Assembly. This was the case, in 1994, with an initiative concerning asylum policy which was found to be contrary to the principle of non-refoulement. With regard to the justiciability of economic, social and cultural rights, the Federal Council considers that the standards of the International Covenant on Economic, Social and Cultural Rights are not directly applicable. In May 2008, the Federal Court considered it contains a catalogue of economic, social and cultural rights which each State party undertakes to achieve progressively within available resources, and Switzerland considers that the Covenant has programmatic provisions which provide guidance to Governments. With regard to the children of Travellers and the right to education, it is a challenge to ensure access to schooling in light of their nomadic lifestyle. Pragmatic solutions have included school attendance where the families spend the winter, and during the summer the children are provided with necessary school materials and interact with their teachers by correspondence. Switzerland has set the level of overseas development assistance from 2008 to 2015 at 0.4 per cent of GDP. It ensures that legislation and practice is compatible with the 1951 Convention relating to the Status of Refugees and other international human rights commitments.

21. China referred to the national report and to the report prepared by OHCHR which states that women still suffer from various forms of discrimination both in employment and in daily life. The rate of participation in political decision-making is still low and violence against women and sexual

aggression remain serious concerns. China would like to know if the Government has adopted a package of measures to protect the rights and interests of women.

22. Morocco stated that despite the creation in 2006 of the Swiss Council of Religions (*Conseil Suisse des Religions*) certain initiatives targeting the Muslim community remain a source of concern. As the foreign population encounters more difficulties than Swiss nationals in the field of education, training and employment, Morocco wished that Switzerland reinforce its action in these areas and that it examine the possibility of ratifying the ICRMW. Morocco encouraged Switzerland to establish a national human rights institution in accordance with the Paris Principles

23. Slovenia noting that Switzerland still maintains several reservations to ICCPR and ICERD, requested information on the rationale behind this and asked if it intends to withdraw any of these reservations in the near future. It also asked if Switzerland is planning to establish a national human rights institution. When running for the Human Rights Council in 2006, Switzerland had as a voluntary pledge announced that it would contribute towards the development of a country-by-country "Human Rights Index"; Slovenia requested Switzerland to provide an update on this issue. Slovenia recommended that Switzerland further address and enhance combating the root causes of discrimination, particularly of foreign migrant women, by removing legal and systemic obstacles to equal rights. It also recommended that Switzerland take measures to prevent that migrant women victims of sexual and domestic violence and/or trafficking are at risk of deportation, if such incidents are reported. Slovenia also recommended that Switzerland fully, systematically and continuously integrate a gender perspective into the follow-up process to the Universal Periodic Review.

24. The Netherlands recommended that Switzerland strengthen its efforts to guarantee equal opportunities in the labour market, in particular for women from minority groups. Noting that 20 per cent of the population are not Swiss nationals, the Netherlands asked whether the Government considers this fact as a potential problem and, if so, whether it expects to increase participation of minority groups and other non-nationals in politics. It recommended that Federal legislation be strived for to provide protection against all forms of discrimination, including on grounds of sexual orientation and gender identity, and that the Yogyakarta Principles be applied as a guide to enhance the Government's commitment to non-discrimination on grounds of sexual orientation and gender identity.

25. The Philippines supported Switzerland's efforts to promote and enhance the positive effects of migration, and thanked it for its active role in promoting the Global Forum on Migration and Development. Philippines recommended that Switzerland consider ratifying the ICRMW, and establishing an independent federal national human rights institution in accordance with the Paris Principles.

26. United Kingdom of Great Britain and Northern Ireland was pleased to note that more than 100 NGOs were consulted in the process of preparation of the national report, and recommended that stakeholders be further consulted in the follow-up to the Universal Periodic Review outcome. The United Kingdom also recommended that a national human rights institution be quickly established in line with the Paris Principles. It enquired about the Swiss reaction to criticism to its legislation on foreigners, in particular on non-European citizens. While welcoming the entry into force of the Swiss Federal Civil Partnership Act, the United Kingdom recommended that additional steps be taken to ensure that same sex couples are not discriminated. It also asked for an update on the work of the Government towards the ratification of the Optional Protocol to CAT and recommended that this important instrument be ratified in the near future.



27. Qatar noted the deep-rooted human rights traditions and the prominent role played by Switzerland in setting up the Human Rights Council and the Universal Periodic Review. Since it has one of highest level of foreigners in Europe, Qatar wished to know about the efforts, guarantees and measures taken by Switzerland to ensure that foreigners, in particular Muslims, are not targeted. Qatar asked for more information about Switzerland's experience in having a balance between freedom of expression and ensuring that members of other religions are not abused.

28. Colombia asked about action taken to increase a gender balance, especially with regard to salary disparities, and the way in which childcare could be combined with a greater engagement of women in the labour market. It also requested information on the protection of the rights of migrant workers, especially married female migrant workers, and on the prospect of ratifying ICRMW.

29. Senegal welcomed the progress demonstrated in areas of health care, welfare protection and fundamental freedoms as a whole. Senegal hoped that Switzerland would continue to be successful in its efforts to improve the situation of migrants, to better tackle poverty, and to put an end to the risks that xenophobia and intolerance may develop. Senegal asked if Switzerland has examined the possibility of lifting its reservation to article 4 of ICERD and if it is planning to ratify the ICRMW.

30. Azerbaijan wished to know whether Switzerland was planning to establish a federal human rights commission, and with regard to a specific concern raised by the Human Rights Committee, CERD, the Committee on the Rights of the Child and CEDAW, asked whether the application of Switzerland's international obligations throughout its territory may be hampered by its federal structure. Azerbaijan also enquired on when Switzerland plan to become a party to the first Optional Protocol to ICCPR, as recommended by the Human Rights Committee.

31. Saudi Arabia welcomed Switzerland's commitment to human rights and for its support and contributions to the United Nations agencies and international organizations and NGOs. Saudi Arabia noted that there is no national human rights institution in Switzerland. It also noted that the Federal Council to combat racism, set up in 1995 to monitor cases of racial discrimination, does not have authority to take any legal measures to combat racial discrimination. Saudi Arabia asked what steps has Switzerland taken or intends to take in this respect and about the nature of new legislation to give a legal impetus to the bodies which are dealing with human rights to make them more effective and to reduce the phenomenon of racial discrimination, and if there are steps taken to spread a culture of human rights and putting an end to racial discrimination. Saudi Arabia wanted to know if Switzerland's law explicitly prohibits incitement to racial and religious hatred.

32. Turkey asked whether Switzerland was considering the accession to ICRMW, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities, and encouraged Swiss authorities to continue their efforts regarding gender equality. It noted that the interpretation of certain articles of the Swiss Criminal Code, such as provisions contained in article 261bis, may limit the enjoyment of freedom of expression.

33. Romania asked how Switzerland intends to realize the right to housing, in particular right to social housing, and how it reacts to the concerns expressed by the Special Rapporteur on the right to adequate housing in 2000, and if the problems have been solved. It noted that despite progress made, there is still discrimination against women in the labour market, especially as concerns the salary gap between men and women, and asked whether Switzerland intended to introduce supplementary measures to reduce these gaps, and how it intended to address the question of foreign workers.

34. In response to comments and questions put forward by various delegations, Switzerland informed that it had mandated the University of Berne to set up the Human Rights Index, a database which brings together all recommendations, country by country, by treaty bodies and special procedures, accessible free of charge, and which since 2007 has been taken over and managed by OHCHR. The new Federal Act on Aliens stipulates that integration is fundamental. In addition, cantons may grant the right of foreigners to vote and stand for election at canton and/or communal level. Article 8 of the Federal Constitution provides a non-discrimination clause on the ground of lifestyle, which is usually interpreted to cover homosexuality. The Partnership Act introduced registers partnerships which provide a legal basis for the recognition of their lifestyle, similar to a married couple. However, persons in registered partnerships are not authorized to adopt children or to use medically assisted reproduction. There is at the moment no act specifically punishing acts of homophobia. With regard to the freedom of expression and combating racism, Switzerland recognizes four national languages and is designed to promote the harmonious coexistence of various religions and communities. Switzerland has examined and concluded that it will not withdraw its reservation to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, which is de facto already taken up in article 261 in the Criminal Code. Switzerland does not intend to ratify the ICRMW, and noted that the Law on Foreign Nationals Act is not compatible, in particular with regard to extra rights given to illegal migrants, while it intends to see how this develops. The Federal Constitution does not provide for a right to housing, while article 41 of the Constitution refers to social matters. However, pursuant to many provisions in the Constitution, and as part of the housing policy, Switzerland assists persons to find adequate housing and become tenants. It makes constant efforts to provide information on human rights through education in schools, and by the use of websites and brochures. Human rights policies are disseminated to canton authorities. International conventions are directly applicable in Switzerland, enabling any individual, Swiss or foreigner, to invoke them directly before the federal or cantonal courts, and there is a specific provision on recourse on human rights violations before the Supreme Court.

35. Côte d'Ivoire pleaded for a better treatment of migrants in Switzerland, especially those of non-European origin, and asked for more information about the treatment of requests for family reunification of African workers, and if the Swiss authorities could exclude the implementation of any arbitrary measure, in particular through the use of DNA tests, in this regard. Côte d'Ivoire also asked for clarification on the issuance of work permits on a regional basis, which seems to discriminate non-European workers, and on the conformity of this practice with international law on the right to work.

36. Japan thanked Switzerland for organizing a Universal Periodic Review seminar early this year. Understanding that the Federal authorities are considering the possibility of signing the International Convention for the Protection of All Persons from Enforced Disappearance, and are examining the impact of this instrument on the domestic legal system, Japan requested Switzerland to elaborate more on the current status of the consideration of this issue. While there is a steady progress in women's participation in politics, and despite the work of gender equality institutions and the relevant legislative actions undertaken, concerns are still being voiced regarding the wage gap between women and men for work of equal value, especially in the private sector, and regarding the situation of migrant women. Japan asked if Switzerland could evaluate the current situation on this issue, and what policy measures are being contemplated currently or in the future to improve the situation.

37. Portugal recalled that in 2003, CEDAW recommended strengthening the existing machinery for the promotion of gender equality by providing it with adequate resources, and enhancing coordination among existing institutions. Taking into account the subsequent amendment of the

Equality Act in 2004, Portugal asked in which measure the recommendations made by CEDAW were addressed, and whether Switzerland intends to implement the recommendation on the definition of “discrimination against women”. Noting that CEDAW also recommended the formulation of an extensive strategy which should include measures of prevention, the prosecution and punishments of offenders, increased international cooperation and the development of a programme of action for women forced into prostitution, Portugal welcomed the forthcoming ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. .

38. Finland noted that according to latest estimates the popular initiative on “democratic naturalization” has relatively good changes of being approved by the forthcoming referendum. The initiative, if approved, would leave the municipalities free to determine which body decides about naturalization. In addition, a municipal decision would be final, i.e. not open to appeal. Finland therefore would like to know how Switzerland intends to guarantee that its naturalization process is in compliance with its international human rights obligations.

39. Guatemala stated that racism and xenophobia were real problems in the Swiss society. While acknowledging the efforts made by the Swiss Government to combat these phenomena, inter alia, though the establishment of the Department to combat racism and the Federal Commission against racism, Guatemala wished to reiterate the recommendation made by CERD that Switzerland continue its efforts to prevent and to fight racism and xenophobia, in particular through education and awareness-raising campaigns, which could enlighten the population about the positive aspects of migration, and the development of appropriate legislation to combat racism. In the same vein, Guatemala urged Switzerland to consider ratifying the ICRMW.

40. Nigeria noted the establishment of institutions to combat racism. However, Nigeria asked whether, considering article 261 of the Criminal Code, there are specific cases of conviction or any type of punishment of the perpetrators of such acts, especially in the police and security agencies. Nigeria recommended that Switzerland take necessary steps to prevent the incidence of acts of violence with racist and xenophobic undertones by security agents against foreigners, immigrants and asylum-seekers and to bring to justice the perpetrators of such acts.

41. Germany encouraged Switzerland to continue towards the establishment of a national human rights institution and asked about the measures taken by the Government, at both federal and local level, to address the relatively high rate of suicide among juveniles and to find a solution thereto. Germany recommended that Switzerland withdraw its reservations to the Convention on the Elimination of All Forms of Discrimination against Women and to accede to Optional Protocol thereto.

42. Republic of Korea recognized the efforts of Switzerland to address the issue of racism by establishing the Federal Service for Combating Racism and the Federal Commission Against Racism, and the focus on the activities occurring in the field of public relations by paying close attention to campaigns and public interventions and hoped that such efforts will be successful. In 2007, the Special Rapporteur on racism recommended that Switzerland recruit staff from the immigrant population and the various foreign communities and promote comprehensive training in all State services and institutions that deal with immigration and the situation of foreigners. It wished to know more about measures taken to implement this recommendation.

43. Norway stated that if accepted, the initiative for “democratic naturalization” could endanger a number of basic achievements in the field of human rights. Should municipalities be allowed to “naturalize by vote”, the right to know the reasons of the refusal and the right to appeal may be at stake. It therefore asked how the Swiss authorities plan to deal with this evident problem of

compatibility of the above-mentioned initiative with internationally accepted norms. Norway also enquired about the modalities for the follow-up and implementation of treaty body recommendations.

44. The Russian Federation requested the State's official position regarding the posting by one of the political parties, around the country, of posters of openly racist nature which propagates the idea of intolerance against foreigners. It also asked about how Switzerland combats new forms of slavery, and the difficulties faced in this respect.

45. The Islamic Republic of Iran stated that the persistence of hostile attitudes towards black people, Muslims and asylum-seekers was of utmost concern, and asked about policies and actions taken by Swiss authorities, especially regarding the situation of the Muslim community. Iran also expressed concern regarding trafficking of women and girls and their sexual exploitation. In particular, migrant women experience discrimination and are at risk of exploitation and violence. Iran recommended the formulation of a broad strategy to combat these phenomena, which should include measures of prevention, prosecution and punishments of offenders, and increased international cooperation.

46. In response to the interventions, Switzerland noted that DNA testing for workers of foreign origin is a possibility established in the law as a last resort which can only be exercised on a voluntary basis, and that there are possibilities to appeal. Switzerland has not signed the International Convention for the Protection of All Persons from Enforced Disappearance, and in accordance with the practice in Switzerland, examination is currently underway by federal offices on its compatibility with internal legislation and if possible adaptations may be required. Migrant women experience double discrimination on the ground of the foreign origin, their resident status and their sex, and they are particularly vulnerable. The Federal Council noted that the Foreign Nationals Act of March 2002 encourages paying particular attention to women who come to Switzerland for family reunification purposes. Challenges remain to enable integration into the labour market. Switzerland encourages cultural and language studies, and has set up programmes for mothers and children. The 2008 action plan on integration's policy of the Federal Council deals specifically with the protection of women, and the Government provides, under the Federal Act on Equality between Men and Women, financial assistance to projects aimed at enabling migrants to access the labour market. The Law on Equality and the Labour Law provide the right to maternity leave of pregnant women, and this information is published in several languages. On the issue of cabaret dancers and prostitution, article 1 (d) of the Foreign Nationals Act protects persons particularly liable to be exploited in their gainful employment, and there are detailed provisions concerning admissions for cabaret dancers. The popular referendum on naturalizations scheduled for June 2008 does not contradict Switzerland's international obligations. However, if this initiative is accepted it would still need to be implemented through a federal law, and recourse could still be possible to the Federal Court. Any person claiming to have experienced ill-treatment by the police has the right to submit complaints to the general prosecutor's office or the police. The Federal Council has drawn up 45 measures on integration, which address language, training and labour market issues, including subsidies for the integration of aliens and other measures. The 2008 Law on Asylum aims to improve the situation of persons likely to remain in Switzerland for a long time. Individuals admitted temporarily receive support to access employment, and after three years they can bring members of their families. A revision of regulations on asylum is underway, and cantons have the right to issue stay permits. Recommendations by treaty bodies are forwarded to the relevant cantons for timely responses, and information from cantons are also integrated into the subsequent periodic reports to the respective treaty bodies.

47. Thailand welcomed Switzerland's unwavering commitment to signing the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities. Thailand encouraged Switzerland to redouble its efforts to combat racism, racial discrimination and xenophobia by adopting comprehensive national legislation, as well distributing information and promoting education for the public.

48. Bosnia and Herzegovina noted that in 2003, CEDAW commended Switzerland systematically integrating a gender dimension into the various aspects of its development cooperation programmes. However, noting that CEDAW remained concerned that women are still disadvantaged in many areas, especially in the labour market it asked what steps have been taken so far in developing a job evaluation system based on gender sensitive criteria.

49. Haiti encouraged the Swiss authorities to implement all normative and institutional measures to combat persisting racist and discriminatory practices in all their manifestations. It enquired about the measures Switzerland can take regarding violence by police, especially against migrants during expulsion procedures. Haiti also requested information about the high number of weapons owned by Swiss families.

50. Chile referred to the Swiss national report which states that since the 1996 equality law entered into force, the situation of women in labour matters has improved as well as the economic situation of divorced women. However, much still needs to be done to reach de facto equality. Chile would like to about follow-up to the measures contained in the report of OECD referred to in paragraph 19 of the national report. Regarding the protection of children, Chile was particularly interested in the work done together with NGOs and would like to have more details on how is the work structured between the authorities and the representatives of civil society in this respect.

51. Ukraine stated that Switzerland has not escaped from some worldwide problems, such as the scourge of human trafficking and sexual exploitation, but that it made a number of efforts aimed at combating these phenomena, in particular the strengthening of national law and the development of domestic mechanisms. In this connection, Ukraine asked whether these measures were taken in the framework of a relevant comprehensive strategy, as recommended by CEDAW, and whether further information on achievements in this field were available.

52. Jordan noted the efforts and activities Switzerland has made recently, especially in the institutional-building process of the Human Rights Council. It referred to paragraph 58 of the national report on freedom of religion or belief, and requested more information on this highly important. Jordan also hoped that Switzerland would consider positively the possibility of establishing a human rights institution and incorporate a definition of discrimination against women as well as a definition of torture in accordance with CAT.

53. While noting that Switzerland has always been at the forefront of enhancing compliance with international human rights law, Italy also noted that it has not signed the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities, and enquired about the nature of the obstacles to the accession to these two important instruments. Italy wished to receive information on a concern expressed in 2002 by the Committee on the Rights of the Child on the age for criminal responsibility, which appears still too low. Italy recommended considering the explicit prohibition of all practices of corporal punishment of children.

54. Mauritania welcomed the progress made in advancing the gender dimension, in particularly the information campaign on equality as a further measure to strengthen the equality of women. It also noted various measures protecting children and persons with disabilities and action to give

greater opportunities to aliens. Mauritania asked if Switzerland intends to create a federal human rights institution in accordance with the Paris Principles.

55. In responding to some questions, Switzerland noted that it has withdrawn a number of reservations, particularly to the International Covenant on Civil and Political Rights and to the Convention on the Rights of the Child, and that it is a policy to regularly consider reservations with a view to withdrawing them when possible. Legislation has been adopted on the use of constraint in measures of expulsions of foreigners, and provides for recourse measures and compensation if such actions are committed illegally by police officers. At the moment, Switzerland will not adopt further legislation on corporal punishment, while further consideration to this will be given. Switzerland is a neutral country and does not use its weapons against outside countries, and persons as part of the militia army have weapons at home to defend their country. To conclude, the representative noted that the dialogue is the first step of the Universal Periodic Review, and declared Switzerland's willingness to consider recommendations posed to promote progress on human rights.

## **II. CONCLUSIONS AND/OR RECOMMENDATIONS**

**56. The recommendations formulated during the interactive dialogue have been examined by Switzerland and the recommendations listed below enjoy the support of Switzerland:**

- 1. To pursue its efforts in preventing and combating xenophobia (Algeria);**
- 2. To ratify the Optional Protocol to the Convention against Torture (Mexico, United Kingdom) and to create or designate a national mechanism for the prevention of torture (Mexico);**
- 3. To fully, systematically and continuously integrate a gender perspective into the follow-up process to the Universal Periodic Review (Slovenia);**
- 4. To continue to consult stakeholders in the follow-up to the Universal Periodic Review outcome (United Kingdom);**
- 5. To take necessary steps to prevent the incidence of acts of violence with racist and xenophobic undertones by security agents against foreigners, immigrants and asylum-seekers, and to bring to justice the perpetrators of such acts (Nigeria);**
- 6. To continue its efforts to promote the use of non-gender specific language (Canada).**

**57. The following recommendations will be examined by Switzerland which will provide responses in due time. The response of Switzerland will be included in the outcome report to be adopted by the Human Rights Council at its eighth session:**

- 1. To establish a national institution on human rights in accordance with the Paris Principles (Algeria, India, Canada, Philippines, United Kingdom, Germany, Jordan, Morocco);**
- 2. To foster internal analysis on the recently adopted law on asylum and its compatibility with international human rights law (Brazil);**

3. To accede to the first Optional Protocol to the International Covenant on Civil and Political Rights (Brazil);
4. To adopt legislatives or other measures so that human rights are taken into account upstream by the judiciary, in particular during the elaboration of popular initiatives to ensure their compliance with international obligations (Belgium);
5. To consider the establishment of a national commission for women to facilitate a holistic consideration at the national level of issues related to women (India);
6. To adopt measures to reinforce existing mechanisms on combating racial discrimination (Egypt);
7. To adopt a specific law prohibiting incitement to racial and religious hatred, in accordance with article 20, paragraph 2, of the International Covenant of Civil and Political Rights (Egypt);
8. To ensure that the revocation of the resident permits of married women who are victims of domestic violence is subject to a review and done only after a full evaluation of the impact on those women and their children (Canada);
9. To maintain judiciary recourse in the naturalization process (Canada);
10. To treat offenders under the age of 18 in police custody and detention differently from adults (Canada);
11. To recruit minorities in the police and establish a body tasked to carry out inquiries into cases of police brutality (Canada);
12. To accede to the Convention on the Rights of Persons with Disabilities (Mexico);
13. To sign the International Convention for the Protection of All Persons from Enforced Disappearance (France, Mexico);
14. To consider increasing its assistance to developing countries, contributing thereby to the realization of the right to development and the achievement of the Millennium Development Goals (Cuba);
15. To withdraw reservation to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (Cuba);
16. To further address and enhance combating the root causes of discrimination, particularly of foreign migrant women, by removing legal and systemic obstacles to equal rights (Slovenia);
17. To take measures to prevent that migrant women who are victims of sexual and domestic violence or trafficking are at risk of deportation if such incidents are reported (Slovenia);

18. That federal legislation be strived for to provide protection against all forms of discrimination, including on grounds of sexual orientation and gender identity (the Netherlands);
19. To strengthen efforts to guarantee equal opportunities in the labour market, in particular for women from minority groups (the Netherlands);
20. To take additional steps to ensure that same-sex couples are not discriminated (United Kingdom);
21. To withdraw the reservations to the Convention on the Elimination of All Forms of Discrimination against Women (Germany) and to ratify the Optional Protocol thereto (Germany, Brazil, Mexico);
22. Regarding trafficking of women and girls and their sexual exploitation, to formulate a comprehensive strategy, which should include measures of prevention, prosecution and punishment of offenders and increased regional and international cooperation (Islamic Republic of Iran);
23. To consider the explicit prohibition of all practices of corporal punishment of children (Italy).

58. One recommendation noted in the present report in paragraphs 10, 15, 25 and 39 (the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) and another recommendation noted in paragraph 15 (the justiciability of the economic, social and cultural rights) above did not enjoy the support of Switzerland.

59. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.



## **Annex**

### **Composition of the delegation \***

The delegation of Switzerland was headed by H.E. Ms. Micheline Calmy-Rey, Federal Councilor and Head of the Swiss Federal Department of Foreign Affairs and composed of 22 members:

S.E. Amb. Paul Seger, Jurisconsulte, Directeur, Direction du droit international public ;

S.E. Amb. Blaise Godet, Chef de la Mission permanente de la Suisse auprès de l'Office des Nations Unies et des autres organisations internationales à Genève ;

S.E. Amb. Benedikt Wechsler, Chef de Cabinet de la Conseillère fédérale, Département fédéral des affaires étrangères ;

M. Albrecht Dieffenbacher, Chef de l'Etat-major des Affaires juridiques, Office fédéral des migrations, Département fédéral de justice et police ;

Mme Pascale Probst, Cheffe suppléante de l'Etat-major des Affaires juridiques, Office fédéral des migrations, Département fédéral de justice et police ;

M. Michele Galizia, Chef, Service de lutte contre le racisme, Département fédéral de l'intérieur ;

Mme. Muriel Berset Kohen, Ministre, Mission permanente de la Suisse auprès de l'Office des Nations Unies et des autres organisations internationales à Genève ;

M. Andreas Rieder, Chef, Bureau fédéral de l'égalité pour les personnes handicapées, Département fédéral de l'intérieur ;

M. Ralf Heckner, Chef Section politique des droits humains, Division politique IV, Département fédéral des affaires étrangères ;

M. Adrian Scheidegger, Office fédéral de la justice, Département fédéral de justice et police ;

Mme. Corina Müller, Responsable des affaires juridiques, Bureau égalité femmes – hommes, Département fédéral de l'intérieur ;

M. Olivier Zehnder, Division politique III, Coordination ONU, Chef adjoint de Section, Département fédéral des affaires étrangères

M. Mirko Giulietti, Division politique IV, Chef adjoint Section politique des droits humains, Département fédéral des affaires étrangères ;

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M. Christian Zumwald, Adjoint juridique, Office fédéral des migrations, Département fédéral de justice et police ;

M. Christoph Spénlé, Direction du droit international public, Département fédéral des affaires étrangères ;

Mme Natalie Kohli, Premier secrétaire, Mission permanente de la Suisse auprès de l'Office des Nations Unies et des autres organisations internationales à Genève ;

M. Jean-Marie Bouverat, Office fédéral des assurances sociales, Département fédéral de l'intérieur ;

Mme. Claudia Mascetta, Office fédéral des assurances sociales, Département fédéral de l'intérieur ;

Mme. Cordelia Ehrich, Office fédéral de la justice, Département fédéral de justice et police ;

M. Christian Sieber, Secrétariat à l'économie, Direction du travail, Département fédéral de l'économie ;

M. Damaris Carnal, Direction du droit international public, Département fédéral des affaires étrangères.

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